

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 745.5 and Amend Section 746
Title 14, California Code of Regulations
Re: Revocation of Sport Hunting and Fishing License Privileges

- I. Date of Initial Statement of Reasons: September 24, 2004
- II. Date of Pre-adoption Statement of Reasons: October 26, 2004
- III. Date of Final Statement of Reasons: December 14, 2004
- IV. Dates and Locations of Scheduled Hearings:

- | | | |
|-----|--------------------|----------------------------------------------|
| (a) | Notice Hearing: | Date: August 27, 2004
Location: Morro Bay |
| (b) | Discussion Hearing | Date: October 22, 2004
Location: Concord |
| (c) | Adoption Hearing: | Date: December 3, 2004
Location: Monterey |

- V. Update:

The originally proposed language stating that sport hunting or fishing license privileges could be suspended or revoked “for cause” was removed in the pre-adoption statement of reasons. New language was added to state that a person must have been convicted of a wildlife violation in a court of law and a hearing officer must determine that the person committed the offense intentionally, knowingly, or recklessly. The language was modified to clarify the intent of the section which is to provide a mechanism to revoke the privileges of those who have committed an offense particularly damaging to the resource or have shown a blatant disregard for the resources of the State.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

No public comments, written or oral, were received during the public comment period.

- VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No reasonable alternatives exist. The Fish and Game Code dictates that the Commission shall adopt regulations and procedures governing the revocation or suspension of hunting or sport fishing privileges.

(b) No Change Alternative:

The Commission has rejected this alternative because Fish and Game Code Section requires the Commission to adopt regulations addressing this issue. The Commission would be out of compliance with the law.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

There is expected to be a slight increase in the number of people who lose their license privileges as a result of this regulatory action which may result in decreased revenue for businesses that sell outdoor equipment, supplies, and related services. However, any such impact is expected to be negligible.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:
None.
- (e) Nondiscretionary Costs/Savings to Local Agencies:
None.
- (f) Programs Mandated on Local Agencies or School Districts:
None.
- (g) Costs Imposed on Any Local Agency or School District that is Required
to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:
None.
- (h) Effect on Housing Costs:
None.

Updated Informative Digest/Policy Statement Overview

AB 1420, Chapter 291, Statutes of 2003 requires the Fish and Game Commission to adopt regulations and procedures governing the revocation or suspension of hunting or sport fishing privileges. This regulation will allow the commission to consider the suspension or revocation of sport hunting and fishing licenses in a similar manner to commercial fishing licenses.

In 1998, the Legislature granted the commission the authority to revoke or suspend commercial fishing privileges after notice and opportunity for a hearing (section 7857, Fish and Game Code). Prior to this, there were a variety of conditions under which commercial fishing licenses and permits could be suspended or revoked, much like the current situation with sport hunting and fishing licenses.

Under current law the department and the commission have the authority to revoke or suspend trapping or recreational hunting and fishing license privileges only if the person is convicted of three violations in a five-year period regardless of the nature of the violation. There is no authority to revoke or suspend the privilege granted by these licenses in circumstances involving the commission of only a single offense even if it is especially damaging **or shows a blatant disregard of the resources of the State**. Single violations that are particularly damaging include those involving large overlimits, big game mammals, fully protected birds, mammals, or fish, specially protected mammals, and species listed as threatened or endangered.

Other instances in which a single conviction is damaging is when a person is allowed to plead to a single violation even though multiple violations may have been committed and charged. The types of violations frequently involved in such cases can be particularly damaging because they include conspiracy to: take fish or wildlife out-of-season, take animals for only a specific portion of the animal (large antlers, gall bladders, claws, talons, etc.), take during closed hours, take by cruel methods, take for commercial purposes, etc.

Minor editorial changes were made to clarify the regulations, as introduced in the Pre-Adoption Statement, and as mailed to interested and affected parties on November 17, 2004.

Addendum to Final Statement of Reasons

This memo is provided to clarify the meaning of section 12155.5 of the California Fish and Game Code (Code) that is being used as “Authority” for the Fish and Game Commission’s proposed addition and amendment to Title 14, California Code of Regulations sections 745.5 and 746.

AB 1420 (Laird) was the Department of Fish and Game’s (Department) omnibus enforcement bill for 2004. The overall purpose of the bill was to clean up certain problems that the Department had become aware of in its enforcement program over the last several years. This Department-sponsored bill dealt with a range of topics including elk management and fines for fishing without a license.

As can be seen from the Department’s approved Bill Analysis (Attachment A, page 3) one of the provisions was intended to expand the Fish and Game Commission’s (Commission) authority to revoke or suspend licenses. It states:

Under existing law, revocation or suspension of sport licenses is complex and, depending on the violation, may be within the jurisdiction of either the Commission or the courts. ... There is also a provision (in the bill) that allows the Commission or the Department to consider revocation or suspension of the hunting or fishing privileges of a person who has committed a single, serious wildlife violation. (Emphasis added.)

When Assemblymember Laird, the author of the bill, prepared a Fact Sheet (Attachment B, page 1) on its contents, he stated that suspension and revocation were within the domain of both the Commission and the courts, but,

...in some instances, a single serious wildlife violation is sufficient for a court to suspend or revoke privileges; however, under no circumstances does the Commission have equivalent authority....AB 1420 would provide the Commission with uniform authority to suspend or revoke licenses based on wildlife violations.

When the Senate Committee on Natural Resources and Wildlife considered AB 1420, its analysis (Attachment C, p. 3) echoed this discrepancy between how courts and the Commission could handle wildlife violations and that the bill was to bring consistency so that “a single, serious wildlife violation” would be the basis for license suspension or revocation.

Finally, in both the Senate and Assembly, the Department made clear (Attachment D, p. 1) its intent to enable the Commission to suspend or revoke a license based on one violation of the Code. It advised the members that:

There is also no provision (in existing law) that allows the Commission or the Department to consider revocation or suspension of the hunting or fishing

privileges of a person who has committed a single, serious wildlife violation. Expanding the Commission's authority and standardizing the revocation process will help ensure that wildlife violators will be dealt with consistently and justly while also reducing court costs.

Thus the records contained in the legislative history of AB 1420 make clear that the Department's sole purpose in proposing section 12155.5 and the Legislature's sole intent in enacting this change was to give the Commission the authority to adopt regulations that would allow it to revoke or suspend the license of an individual who has committed a "single, serious" offense.

Section 745.5, Title 14, CCR is added as follows:

§ 745.5. Revocation or Suspension of Hunting or Sport Fishing Privileges.

(a) The commission may suspend or revoke a person's hunting or sport fishing license or permit privileges for cause, provided that:

(1) in a court of law the person is convicted of a violation of any provision of the California Fish and Game Code; any provision of Title 14, California Code of Regulations; or any other provision of law intended to protect fish and wildlife of the State of California; and

(2) the commission complies with the procedures set forth in section 746, Title 14, California Code of Regulations.

(3) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly.

(b) A person whose license or permit privileges have been suspended or revoked pursuant to Fish and Game Code Section 12154, 12155, or 12156 may appeal the revocation to the commission, and the commission shall comply with the procedures set forth in subdivision (a) of section 746, Title 14, California Code of Regulations.

(c) The procedures set forth in section 746, Title 14, California Code of Regulations shall not apply to a person described in subdivision (a) of Fish and Game Code Section 4340 or 4754.

(d) As used in this section, "license or permit privileges" means the privilege of applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the Department of Fish and Game.

(e) Any person whose license or permit privileges have been suspended or revoked shall be subject to the terms of the Wildlife Violator Compact as set forth in Fish and Game Code Section 716.

Note: Authority cited: Section 12155.5, Fish and Game Code. Reference: Sections 4340, 4754, 12154, 12155, 12155.5, and 12156, Fish and Game Code.

Section 746, title 14, CCR is amended as follows:

§ 746. Procedures for License or Permit Privileges, License or Permit Revocations, Suspensions, Reinstatements, Transfers or Waivers of Renewal Requirements Including Hunting and Sport Fishing License or Permit Privileges.

Except where revocation, suspension, transfer, reinstatement or waiver of renewal requirement procedures are specifically provided for by the Fish and Game Code or regulations made pursuant thereto, the commission, pursuant to the provisions of Section 309 of the Fish and Game Code, shall comply with the following minimum safeguards to afford each applicant, licensee or permittee procedural and substantive

due process when the commission considers revocation, suspension, transfer, reinstatement or waiver of renewal requirements for a license or permit including hunting and sport fishing license or permit privileges.

(a) In the case where the applicant, licensee or permittee has already been convicted of a violation of the Fish and Game Code or any regulation pertaining to the activity licensed or permitted by said code, the commission shall comply with the following:

(1) The commission's president may appoint a commissioner, the commission's legal counsel, or a member of the State Bar of California with at least ten years' experience in the active practice of law and determined qualified by the president, to serve as a hearing officer.

(2) The hearing shall be held at such time and location determined by the hearing officer with due consideration for the convenience of the parties and the ends of justice. The hearing officer may engage in ex parte communications with the parties for the purpose of setting a time and place of hearing.

(3) The commission shall notify the applicant, licensee or permittee, by certified letter, of the commission's intent to consider the revocation or suspension of his or her license or permit privileges. The certified letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) Reason for potential commission action, including a statement as to the date and fact of conviction.

(D) A copy of Section 746, Title 14, California Code of Regulations.

(E) A statement that the applicant, licensee or permittee has the right to appear and to be represented by counsel.

(4) The proceedings of the hearing shall be recorded by a court reporter or an electronic tape recording system.

(5) The hearing shall be conducted by the hearing officer who shall control the nature and order of the proceedings.

(6) At the hearing, the hearing officer shall read the conviction documents. The department shall provide the hearing officer with the background information regarding the violation and conviction and shall submit into the record a copy of a document which includes the facts of the conviction of a violation of regulation or statute.

(7) The applicant, licensee or permittee shall make his or her statement regarding the violation and conviction, and may argue that extenuating circumstances were such as to not warrant the loss of his or her license or permit privileges.

(8) The hearing officer may examine any party or witness.

(9) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and submit to the executive director a proposed decision which shall include proposed findings or reasons for the commission's action.

(10) Upon receipt of the proposed decision, the commission shall provide counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the hearing officer's proposed decision.

(11) At a meeting of the commission, no later than 60 days following receipt of the hearing officer's proposed decision, the commission shall consider adoption of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the commission's order and decision. The order is final.

(12) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate

in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

(b) In the case where the applicant, licensee or permittee has not been convicted of a violation of the Fish and Game Code or any regulation pertaining to the activity licensed or permitted by said code, but has been cited by the department, the commission shall comply with the following:

(1) The commission's president may appoint a commissioner, the commission's legal counsel, or a member of the State Bar of California with at least ten years experience in the active practice of law and determined qualified by the president, to serve as a hearing officer.

(2) The hearing shall be held at such time and location determined by the hearing officer with due consideration for the convenience of the parties and the ends of justice except that any hearing requested by the holder of a commercial lobster permit, pursuant to Section 8254.7 of the Fish and Game Code, shall be held within the time specified therein. The hearing officer may engage in exparte communications with the parties for the purpose of setting a time and place of hearing.

(3) The commission shall notify the applicant, licensee or permittee, by certified letter, of the commission's intent to consider the revocation or suspension of his or her license or permit privileges. The certified letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) Reason for potential commission action, including a concise statement of the alleged acts or omissions of the applicant, licensee or permittee which constitute a violation of the Fish and Game Code and regulations made pursuant thereto with specific citations of the code sections alleged to have been violated.

(D) A copy of Section 746, Title 14, California Code of Regulations.

(E) A statement that the applicant, licensee or permittee has the right to appear and to be represented by legal counsel.

(4) The proceedings of the hearing shall be recorded by a court reporter or an electronic tape recording system.

(5) The hearing shall be conducted by the hearing officer who shall control the nature and order of the proceedings.

(6) The applicant, licensee, permittee and the department have the right to present evidence at the scheduled hearing as follows:

(A) Oral evidence shall be taken on oath or affirmation.

(B) The parties may submit affidavits by adhering to the procedure set out for the submission of affidavits in lieu of testimony in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(2), and may submit transcripts of depositions by adhering to the procedure set out for the submission of depositions in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(3).

(C) Each party may call and examine witnesses, cross-examine opposing witnesses on any relevant matter, may rebut evidence against him or her, and may orally argue the matter.

(D) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons would rely in the conduct of serious affairs.

(7) The hearing officer may examine any party or witness.

(8) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and submit to the executive director a proposed decision based on the evidence presented at the hearing. The decision shall contain proposed findings and reasons for the commission's action.

(9) Upon receipt of the proposed decision, the commission shall provide counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the hearing officer's proposed decision.

(10) At a meeting of the commission, no later than 60 days following the receipt of the hearing officer's proposed decision, the commission shall consider adoption of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the commission's order

and decision. The order is final.

(11) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

(c) In the case where the applicant, licensee or permittee has neither been convicted nor cited by the department for a violation of the Fish and Game Code, but is appealing department denial of issuance, transfer, reinstatement or requesting waiver of renewal requirements for any permit or license, including a hunting or sport fishing license or permit, the commission shall comply with the following:

(1) The commission's president may appoint a commissioner, the commission's legal counsel, or a member of the State Bar of California with at least ten years experience in the active practice of law and determined qualified by the president, to serve as a hearing officer.

(2) The hearing shall be held at such time and location determined by the hearing officer with due consideration for the convenience of the parties and the ends of justice. The hearing officer may engage in ex parte communications with the parties for the purpose of setting a time and place of hearing.

(3) The commission shall notify the applicant, licensee or permittee, by certified letter, of the commission's intent to consider the request for issuance, reinstatement or waiver of renewal requirements for the license or permit. The certified letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) A copy of Section 746, Title 14, California Code of Regulations.

(D) A statement that the applicant, licensee or permittee has the right to appear and to be represented by legal counsel.

(4) The proceedings of the hearing shall be recorded by a court reporter or an electronic tape recording system.

(5) The hearing shall be conducted by the hearing officer who shall control the nature and order of the proceedings.

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(B) The parties may submit affidavits by adhering to the procedure set out for the submission of affidavits in lieu of testimony in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(2), and may submit transcripts of depositions by adhering to the procedure set out for the submission of depositions in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(3).

(C) Each party may call and examine witnesses, cross-examine opposing witnesses on any relevant matter, may rebut evidence against him or her, and may orally argue the matter.

(D) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons would rely in the conduct of serious affairs.

(7) The hearing officer may examine any party or witness.

(8) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and submit to the executive director a proposed decision based on the evidence presented at the hearing. The decision shall contain proposed findings and reasons for the commission's action.

(9) Upon receipt of the proposed decision, the commission shall provide counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the hearing officer's proposed decision.

(10) At a meeting of the commission, no later than 60 days following the receipt of the hearing officer's proposed decision, the commission shall consider adoption of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the commission's order and decision. The order is final.

(11) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service

(postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

Note: Authority cited: Sections 309 and 12155.5, Fish and Game Code. Reference: Sections 309, 7852.2, 8254.7, 8280.4, 8422, 8423.5, 8562, ~~and~~ 8569, 12154, 12155, 12155.5, and 12156, Fish and Game Code.